

64-13-1. Definitions.

As used in this chapter:

(1) "Community correctional center" means a nonsecure correctional facility operated:

- (a) by the department; or
- (b) under a contract with the department.

(2) "Correctional facility" means any facility operated to house offenders, either in a secure or nonsecure setting:

- (a) by the department; or
- (b) under a contract with the department.
- (3) "Department" means the Department of Corrections.

(4) "Emergency" means any riot, disturbance, homicide, inmate violence occurring in any correctional facility, or any situation that presents immediate danger to the safety, security, and control of the department.

(5) "Executive director" means the executive director of the Department of Corrections.

(6) "Inmate" means any person who is committed to the custody of the department and who is housed at a correctional facility or at a county jail at the request of the department.

(7) "Offender" means any person who has been convicted of a crime for which he may be committed to the custody of the department and is at least one of the following:

- (a) committed to the custody of the department;
- (b) on probation; or
- (c) on parole.

(8) "Secure correctional facility" means any prison, penitentiary, or other institution operated by the department or under contract for the confinement of offenders, where force may be used to restrain them if they attempt to leave the institution without authorization.

Amended by Chapter 36, 2003 General Session

64-13-2. Creation of department.

There is created a Department of Corrections, under the general supervision of the executive director of the department. The department is the state authority for corrections and assumes all powers and responsibilities formerly vested in the Board of Corrections and the Division of Corrections in the Department of Human Services.

Amended by Chapter 183, 1990 General Session

64-13-3. Executive director.

(1) The executive director shall be appointed by the governor with the consent of the Senate.

(2) The executive director shall be experienced and knowledgeable in the field of corrections and shall have training in criminology and penology.

(3) The governor shall establish the executive director's salary within the salary

range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 176, 2002 General Session

64-13-6. Department duties.

- (1) The department shall:
 - (a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;
 - (b) implement court-ordered punishment of offenders;
 - (c) provide program opportunities for offenders;
 - (d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;
 - (e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;
 - (f) manage programs that take into account the needs and interests of victims, where reasonable;
 - (g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;
 - (h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;
 - (i) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals; and
 - (j) implement the provisions of Title 77, Chapter 28c, Interstate Compact for Adult Offender Supervision.
- (2) (a) By following the procedures in Subsection (2)(b), the department may investigate the following occurrences at state correctional facilities:
 - (i) criminal conduct of departmental employees;
 - (ii) felony crimes resulting in serious bodily injury;
 - (iii) death of any person; or
 - (iv) aggravated kidnapping.
 - (b) Prior to investigating any occurrence specified in Subsection (2)(a), the department shall:
 - (i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred; and
 - (ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (2)(a).
 - (3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.
 - (4) The department shall provide data to the Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender treatability, the implementation and effectiveness of sex offender treatment, and the results of ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile Justice shall then report these data in writing to the Judiciary Interim Committee, if requested by the committee, and to the appropriate appropriations

subcommittee annually.

(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

Amended by Chapter 51, 2011 General Session

64-13-7. Offenders in custody of department.

All offenders committed for incarceration in a state correctional facility, for supervision on probation or parole, or for evaluation, shall be placed in the custody of the department. The department shall establish procedures and is responsible for the appropriate assignment or transfer of public offenders to facilities or programs.

Amended by Chapter 116, 1987 General Session

64-13-7.5. Persons in need of mental health services -- Contracts.

(1) Except as provided for in Subsection (2), when the department determines that a person in its custody is in need of mental health services, the department shall contract with the Division of Substance Abuse and Mental Health, local mental health authorities, or the state hospital to provide mental health services for that person. Those services may be provided at the Utah State Hospital or in community programs provided by or under contract with the Division of Substance Abuse and Mental Health, a local mental health authority, or other public or private mental health care providers.

(2) If the Division of Substance Abuse and Mental Health, a local mental health authority, or the state hospital notifies the department that it is unable to provide mental health services under Subsection (1), the department may contract with other public or private mental health care providers to provide mental health services for persons in its custody.

(3) A person who provides mental health services for sex offender treatment as required in Section 64-13-6 shall be licensed as a mental health professional in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act, and exhibit competency to practice in the area of sex offender treatment based on education, training, and practice.

Amended by Chapter 8, 2002 Special Session 5

64-13-8. Designation of employee powers.

The department shall designate by policy which of its employees have the authority and powers of peace officers, the power to administer oaths, and other powers the department considers appropriate, including but not limited to the responsibility to bear firearms.

Amended by Chapter 116, 1987 General Session

64-13-10. Department duties -- Rulemaking authority.

(1) The department shall provide probation supervision programs, parole

supervision programs, correctional facilities, community correctional centers, and other programs or facilities as necessary and as required to accomplish its purposes.

(2) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this chapter.

Amended by Chapter 382, 2008 General Session

64-13-12. Assistance to sheriffs.

Where resources permit, the department may assist county sheriffs in the development of jail standards, in the review of jail facilities, and shall provide other services as requested by the sheriffs.

Amended by Chapter 100, 1988 General Session

64-13-13. Administrators.

The executive director shall appoint deputy directors, wardens, regional administrators, and other administrators as necessary to administer correctional programs. Deputy directors, wardens, and regional administrators shall have experience in corrections, related criminal justice fields, law, or criminology, and experience in administration.

Amended by Chapter 116, 1987 General Session

64-13-14. Secure correctional facilities.

(1) The department shall maintain and operate secure correctional facilities for the incarceration of offenders.

(2) For each compound of secure correctional facilities, as established by the executive director, wardens shall be appointed as the chief administrative officers by the executive director.

(3) The department may transfer offenders from one correctional facility to another and may, with the consent of the sheriff, transfer any offender to a county jail.

Amended by Chapter 306, 2007 General Session

64-13-14.5. Limits of confinement place -- Release status -- Work release.

(1) The department may extend the limits of the place of confinement of an inmate when, as established by department policies and procedures, there is cause to believe the inmate will honor his trust, by authorizing him under prescribed conditions:

(a) to leave temporarily for purposes specified by department policies and procedures to visit specifically designated places for a period not to exceed 30 days;

(b) to participate in a voluntary training program in the community while housed at a correctional facility or to work at paid employment;

(c) to be housed in a nonsecure community correctional center operated by the department; or

(d) to be housed in any other facility under contract with the department.

(2) The department shall establish rules governing offenders on release status.

A copy of the rules shall be furnished to the offender and to any employer or other person participating in the offender's release program. Any employer or other participating person shall agree in writing to abide by the rules and to notify the department of the offender's discharge or other release from a release program activity, or of any violation of the rules governing release status.

(3) The willful failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed to an institution or facility designated by the department is an escape from custody.

(4) If an offender is arrested for the commission of a crime, the arresting authority shall immediately notify the department of the arrest.

(5) The department may impose appropriate sanctions upon offenders who violate rules, including prosecution for escape under Section 76-8-309 and for unauthorized absence.

(6) An inmate who is housed at a nonsecure correctional facility and on work release may not be required to work for less than the current federally established minimum wage, or under substandard working conditions.

Enacted by Chapter 116, 1987 General Session

64-13-14.6. Inmate trusty status.

(1) The department may grant an offender trusty status.

(2) Trusty status may be granted to an inmate who has:

(a) been granted a release date by the Board of Pardons and Parole; and

(b) agreed to the terms and conditions established by the department to participate in compensatory service or work projects prior to his parole date.

(3) The department shall develop rules governing inmates granted trusty status.

Amended by Chapter 274, 2004 General Session

64-13-14.7. Victim notification of offender's release.

(1) As used in this section:

(a) "Offender" means a person who committed an act of criminally injurious conduct against the victim and has been sentenced to incarceration in the custody of the department.

(b) "Victim" means a person against whom an offender committed criminally injurious conduct as defined in Section 63M-7-502, and who is entitled to notice of hearings regarding the offender's parole under Section 77-27-9.5. "Victim" includes the legal guardian of a victim, or the representative of the family of a victim who is deceased.

(2) (a) A victim shall be notified of an offender's release under Sections 64-13-14.5 and 64-13-14.7, or any other release to or from a half-way house, to a program outside of the prison such as a rehabilitation program, state hospital, community center other than a release on parole, commutation or termination for which notice is provided under Sections 77-27-9.5 and 77-27-9.7, transfer of the offender to an out-of-state facility, or an offender's escape, upon submitting a signed written request of notification to the Department of Corrections. The request shall include a

current mailing address and may include current telephone numbers if the victim chooses.

(b) The department shall advise the victim of an offender's release or escape under Subsection (2)(a), in writing. However, if written notice is not feasible because the release is immediate or the offender escapes, the department shall make a reasonable attempt to notify the victim by telephone if the victim has provided a telephone number under Subsection (2)(a) and shall follow up with a written notice.

(3) Notice of victim rights under this section shall be provided to the victim in the notice of hearings regarding parole under Section 77-27-9.5. The department shall coordinate with the Board of Pardons and Parole to ensure the notice is implemented.

(4) A victim's request for notification under this section and any notification to a victim under this section is private information that the department may not release:

(a) to the offender under any circumstances; or

(b) to any other party without the written consent of the victim.

(5) The department may make rules as necessary to implement this section.

(6) The department or its employees acting within the scope of their employment are not civilly or criminally liable for failure to provide notice or improper notice under this section unless the failure or impropriety is willful or grossly negligent.

Amended by Chapter 382, 2008 General Session

64-13-15. Property of offender -- Storage and disposal.

(1) (a) Offenders may retain personal property at correctional facilities only as authorized by the department. An offender's property which is retained by the department shall be inventoried and placed in storage by the department and a receipt for the property shall be issued to the offender. Offenders shall be required to arrange for disposal of property retained by the department within a reasonable time under department rules. Property retained by the department shall be returned to the offender at discharge, or in accordance with Title 75, Utah Uniform Probate Code, in the case of death prior to discharge.

(b) If property is not claimed within one year of discharge, or it is not disposed of by the offender within a reasonable time after the department's order to arrange for disposal, it becomes property of the state and may be used for correctional purposes or donated to a charity within the state.

(c) If an inmate's property is not claimed within one year of his death, it becomes the property of the state in accordance with Section 75-2-105.

(d) Funds which are contraband and in the physical custody of any prisoner, whether in the form of currency and coin which are legal tender in any jurisdiction or negotiable instruments drawn upon a personal or business account, shall be subject to forfeiture following a hearing which accords with prevailing standards of due process. All such forfeited funds shall be used by the department for purposes which promote the general welfare of prisoners in the custody of the department. Money and negotiable instruments taken from offenders' mail under department rule and which are not otherwise contraband shall be placed in an account administered by the department, to the credit of the offender who owns the money or negotiable instruments.

(2) Upon discharge from a secure correctional facility, the department may give an inmate transition funds in an amount established by the department with the approval of the director of the Division of Finance. At its discretion, the department may spend the funds directly on the purchase of necessities or transportation for the discharged inmate.

Amended by Chapter 124, 1991 General Session

64-13-16. Inmate employment.

(1) The department may employ inmates, unless incapable of employment because of sickness or other infirmity or for security reasons, to the degree that funding and available resources allow. An offender may not be employed on work which benefits any employee or officer of the department.

(2) An offender employed under this section is not considered an employee, worker, workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act, except as required by federal statute or regulation.

Amended by Chapter 10, 1997 General Session

Amended by Chapter 375, 1997 General Session

64-13-17. Visitors to correctional facilities -- Correspondence.

(1) (a) The following persons may visit correctional facilities without the consent of the department:

- (i) the governor;
- (ii) the attorney general;
- (iii) a justice or judge of the courts of record;
- (iv) members of the Board of Pardons and Parole;
- (v) members of the Legislature;
- (vi) the sheriff, district attorney, and county attorney for the county in which the correctional facility is located; and
- (vii) any other persons authorized under rules prescribed by the department or court order.

(b) Any person acting under a court order may visit or correspond with any inmate without the consent of the department provided the department has received notice of, and is permitted to respond to, the court order. The court shall consider department policy when making its order.

(c) The department may limit access to correctional facilities when the department or governor declares an emergency or when there is a riot or other disturbance.

(2) (a) A person may not visit with any offender at any correctional facility, other than under Subsection (1), without the consent of the department.

(b) Offenders and all visitors, including those listed in Subsection (1), may be required to submit to a search or inspection of their persons and properties as a condition of visitation.

(3) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing guidelines for providing written notice to

visitors regarding prohibited items and regarding the fact that under state law all visitors may be required to submit to a search of their persons and properties as a condition of visitation.

(4) Offenders housed at any correctional facility may send and receive correspondence, subject to the rules of the department. All correspondence is subject to search, consistent with department rules.

Amended by Chapter 382, 2008 General Session

64-13-18. Copy of sentence of incarceration.

The officer delivering any offender for incarceration shall deliver to the department a certified copy of the sentence received by the officer from the clerk of the court. The department shall give the officer a certificate of delivery and shall submit to the Board of Pardons and Parole a copy of the commitment order. The certified copy of sentence is conclusive evidence of the facts contained in it.

Amended by Chapter 13, 1994 General Session

64-13-19. Labor at correctional facilities.

(1) The department shall determine the types of labor to be pursued, and what kind, quality, and quantity of goods, materials, and supplies shall be produced, manufactured, or repaired at correctional facilities. Contracts may be made for the labor of offenders, including contracts with any federal agency for a project affecting national defense. As many offenders as practicable may be employed to produce, manufacture, or repair any goods, materials, or supplies for sale to the state or its political subdivisions. Prices for all goods, materials, and supplies shall be fixed by the department.

(2) An offender performing labor under this section is not considered an employee, worker, workman, or operative for purposes of Title 34A, Chapter 2, Workers' Compensation Act, except as required by federal statute or regulation.

Amended by Chapter 375, 1997 General Session

64-13-20. Investigative services -- Presentence investigation reports.

(1) The department shall:

- (a) provide investigative services and prepare reports to:
 - (i) assist the courts in sentencing;
 - (ii) assist the Board of Pardons and Parole in its decision-making responsibilities regarding offenders;
 - (iii) assist the department in managing offenders; and
 - (iv) assure the professional and accountable management of the department;
- (b) establish standards for providing investigative services based on available resources, giving priority to felony cases; and
- (c) employ staff for the purpose of conducting:
 - (i) thorough presentence investigations of the social, physical, and mental conditions and backgrounds of offenders; and

(ii) examinations when required by the court or the Board of Pardons and Parole.

(2) The department may provide recommendations concerning appropriate measures to be taken regarding offenders.

(3) (a) The presentence investigation reports prepared by the department are protected as defined in Section 63G-2-305 and after sentencing may not be released except by express court order or by rules made by the Department of Corrections.

(b) The reports are intended only for use by:

(i) the court in the sentencing process;

(ii) the Board of Pardons and Parole in its decisionmaking responsibilities; and

(iii) the department in the supervision, confinement, and treatment of the offender.

(4) Presentence investigation reports shall be made available upon request to other correctional programs within the state if the offender who is the subject of the report has been committed or is being evaluated for commitment to the facility for treatment as a condition of probation or parole.

(5) (a) The presentence investigation reports shall include a victim impact statement in all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the victim.

(b) Victim impact statements shall:

(i) identify the victim of the offense;

(ii) itemize any economic loss suffered by the victim as a result of the offense;

(iii) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;

(iv) describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(v) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and

(vi) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.

(6) If the victim is deceased; under a mental, physical, or legal disability; or otherwise unable to provide the information required under this section, the information may be obtained from the personal representative, guardian, or family members, as necessary.

(7) The department shall employ staff necessary to pursue investigations of complaints from the public, staff, or offenders regarding the management of corrections programs.

Amended by Chapter 81, 2009 General Session

**64-13-21. Supervision of sentenced offenders placed in community --
Rulemaking -- POST certified parole or probation officers and peace officers --
Duties -- Supervision fee.**

(1) (a) The department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the courts, on parole by the Board of Pardons and Parole, or upon acceptance for supervision under the terms

of the Interstate Compact for the Supervision of Parolees and Probationers.

(b) Standards for the supervision of offenders shall be established by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, giving priority, based on available resources, to felony offenders.

(2) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as parole and probation officers by the executive director have the following duties:

(a) monitoring, investigating, and supervising a parolee's or probationer's compliance with the conditions of the parole or probation agreement;

(b) investigating or apprehending any offender who has escaped from the custody of the department or absconded from supervision;

(c) providing investigative services for the courts, the department, or the Board of Pardons and Parole;

(d) supervising any offender during transportation; or

(e) collecting DNA specimens when the specimens are required under Section 53-10-404.

(3) (a) A monthly supervision fee of \$30 shall be collected from each offender on probation or parole. The fee may be suspended or waived by the department upon a showing by the offender that imposition would create a substantial hardship or if the offender owes restitution to a victim.

(b) (i) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or waiver of the supervision fee and the circumstances under which an offender may request a hearing.

(ii) In determining whether the imposition of the supervision fee would constitute a substantial hardship, the department shall consider the financial resources of the offender and the burden that the fee would impose, with regard to the offender's other obligations.

Amended by Chapter 382, 2008 General Session

64-13-21.2. Offender supervision dedicated credits.

All money received from the monthly supervision fee established in Subsection 64-13-21(3) shall be deposited in the General Fund as a parole and probation dedicated credit and shall be used to cover costs incurred in the collection of the fee and in the development of offender supervision programs.

Amended by Chapter 391, 2010 General Session

64-13-21.5. Powers of correctional officers and POST certified correctional enforcement or investigation officers.

(1) Employees of the department who are designated by the executive director as correctional officers may exercise the powers and authority of a peace officer only when needed to properly carry out the following functions:

(a) performing the officer's duties within the boundaries of a correctional facility;

(b) supervising an offender during transportation;

- (c) when in fresh pursuit of an offender who has escaped from the custody of the department; or
- (d) when requested to assist a local, state, or federal law enforcement agency.
- (2) Employees of the department who are POST certified as law enforcement officers or correctional officers and who are designated as correctional enforcement or investigation officers have the following duties as specified by the executive director:
 - (a) providing investigative services for the department;
 - (b) conducting criminal investigations and operations in cooperation with state, local, and federal law enforcement agencies; and
 - (c) providing security and enforcement for the department.

Amended by Chapter 282, 1998 General Session

64-13-23. Offender's income and finances.

The department may require each offender, while in the custody of the department or while on probation or parole, to place funds received or earned by him from any source into an account administered by the department or into a joint account with the department at a federally insured financial institution.

(1) The department may require each offender to maintain a minimum balance in either or both accounts for the particular offender's use upon discharge from the custody of the department or upon completion of parole or probation.

(2) If the funds are placed in a joint account at a federally insured financial institution:

- (a) any interest accrues to the benefit of the offender account; and
- (b) the department may require that the signatures of both the offender and a departmental representative be submitted to the financial institution to withdraw funds from the account.

(3) If the funds are placed in an account administered by the department, the department may by rule designate a certain portion of the offender's funds as interest-bearing savings, and another portion as noninterest-bearing to be used for day-to-day expenses.

(4) The department may withhold part of the offender's funds in either account for expenses of:

- (a) incarceration, supervision, or treatment;
- (b) court-ordered restitution, reparation, fines, alimony, support payments, or similar court-ordered payments;
- (c) obtaining the offender's DNA specimen, if the offender is required under Section 53-10-404 to provide a specimen;
- (d) department-ordered restitution; and
- (e) any other debt to the state.

(5) (a) Offenders may not be granted free process in civil actions, including petitions for a writ of habeas corpus, if, at any time from the date the cause of action arose through the date the cause of action remains pending, there are any funds in either account which have not been withheld or are not subject to withholding under Subsection (3) or (4).

- (b) The amount assessed for the filing fee, service of process and other fees

and costs shall not exceed the total amount of funds the offender has in excess of the indigence threshold established by the department but not less than \$25 including the withholdings under Subsection (3) or (4) during the identified period of time.

(c) The amounts assessed shall not exceed the regular fees and costs provided by law.

(6) The department may disclose information on offender accounts to the Office of Recovery Services and other appropriate state agencies.

Amended by Chapter 140, 2002 General Session

64-13-24. Standards for staff training.

To assure the safe and professional operation of correctional programs, the department shall establish policies setting minimum standards for the basic training of all staff upon employment, and the subsequent regular training of staff. The training standards of correctional officers who are designated as peace officers shall be not less than those established by the Peace Officer Standards and Training Council.

Amended by Chapter 116, 1987 General Session

64-13-25. Standards for programs -- Audits.

(1) To promote accountability and to ensure safe and professional operation of correctional programs, the department shall establish minimum standards for the organization and operation of its programs.

(a) The standards shall be promulgated according to state rulemaking provisions. Those standards that apply to offenders are exempt from the provisions of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act. Offenders are not a class of persons under that act.

(b) Standards shall provide for inquiring into and processing offender complaints.

(2) There shall be an audit for compliance with standards according to policies and procedures established by the department, for continued operation of correctional programs.

(a) At least every three years, the department shall internally audit all programs for compliance with established standards.

(b) All financial statements and accounts of the department shall be reviewed during the audit. Written review shall be provided to the managers of the programs and the executive director of the department.

(c) The reports shall be classified as confidential internal working papers and access is available at the discretion of the executive director or the governor, or upon court order.

Amended by Chapter 382, 2008 General Session

64-13-26. Private providers of services.

(1) The department may contract with private providers or other agencies for the provision of care, treatment, and supervision of offenders committed to the care and

custody of the department.

(2) (a) The department shall:

(i) establish standards for the operation of the programs; and

(ii) annually review the programs for compliance.

(b) The reviews shall be classified as confidential internal working papers.

(c) Access to records regarding the reviews is available upon the discretion of the executive director or the governor, or upon court order.

Amended by Chapter 224, 1989 General Session

64-13-27. Records -- Access.

(1) (a) The Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, county attorneys' offices, and state and local law enforcement agencies shall furnish to the department upon request a copy of records of any person arrested in this state.

(b) The department shall maintain centralized files on all offenders under the jurisdiction of the department and make the files available for review by other criminal justice agencies upon request in cases where offenders are the subject of active investigations.

(2) All records maintained by programs under contract to the department providing services to public offenders are the property of the department.

Amended by Chapter 263, 1998 General Session

64-13-29. Violation of parole or probation -- Detention -- Hearing.

(1) The department shall ensure that the court is notified of violations of the terms and conditions of probation in the case of probationers under the department's supervision, or the Board of Pardons and Parole in the case of parolees under the department's supervision. In cases where the department desires to detain an offender alleged to have violated his parole or probation and where it is unlikely that the Board of Pardons and Parole or court will conduct a hearing within a reasonable time to determine if the offender has violated his conditions of parole or probation, the department shall hold an administrative hearing within a reasonable time, unless the hearing is waived by the parolee or probationer, to determine if there is probable cause to believe that a violation has occurred. If there is a conviction for a crime based on the same charges as the probation or parole violation, or a finding by a federal or state court that there is probable cause to believe that an offender has committed a crime based on the same charges as the probation or parole violation, the department need not hold its administrative hearing.

(2) The appropriate officer or officers of the department shall, as soon as practical following the department's administrative hearing, report to the court or the Board of Pardons and Parole, furnishing a summary of the hearing, and may make recommendations regarding the disposition to be made of the parolee or probationer. Pending any proceeding under this section, the department may take custody of and detain the parolee or probationer involved for a period not to exceed 72 hours excluding weekends and holidays.

(3) If the hearing officer determines that there is probable cause to believe that the offender has violated the conditions of his parole or probation, the department may detain the offender for a reasonable period of time after the hearing or waiver, as necessary to arrange for the incarceration of the offender. Written order of the department is sufficient authorization for any peace officer to incarcerate the offender. The department may promulgate rules for the implementation of this section.

Amended by Chapter 13, 1994 General Session

64-13-30. Expenses incurred by offenders -- Payment to department or county jail -- Medical care expenses and copayments.

(1) (a) The department shall establish and collect from each offender on a work release program the reasonable costs of the offender's maintenance, transportation, and incidental expenses incurred by the department on behalf of the offender.

(b) Priority shall be given to restitution and family support obligations.

(c) The offender's reimbursement to the department for the cost of obtaining the offender's DNA specimen under Section 53-10-404 is the next priority after Subsection (1)(b).

(2) The department, under its rules, may advance funds to any offender as necessary to establish the offender in a work release program.

(3) (a) The department or county jail may require an inmate to make a copayment for medical and dental services provided by the department or county jail.

(b) For services provided while in the custody of the department, the copayment by the inmate is \$5 for primary medical care, \$5 for dental care, and \$2 for prescription medication.

(c) For services provided outside of a prison facility while in the custody of the department, the offender is responsible for 10% of the costs associated with hospital care with a cap on an inmate's share of hospital care expenses not to exceed \$2,000 per fiscal year.

(4) (a) An inmate who has assets exceeding \$200,000, as determined by the department upon entry into the department's custody, is responsible to pay the costs of all medical and dental care up to 20% of the inmate's total determined asset value.

(b) After an inmate has received medical and dental care equal to 20% of the inmate's total asset value, the inmate is subject to the copayments provided in Subsection (3).

(5) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

(6) An inmate may not be denied medical treatment if the inmate is unable to pay for the treatment because of inadequate financial resources.

(7) When an offender in the custody of the department receives medical care that is provided outside of a prison facility, the department shall pay the costs:

(a) at the contracted rate; or

(b) (i) if there is no contract between the department and a health care facility that establishes a fee schedule for medical services rendered, expenses shall be at the noncapitated state Medicaid rate in effect at the time the service was provided; and

(ii) if there is no contract between the department and a health care provider

that establishes a fee schedule for medical services rendered, expenses shall be 65% of the amount that would be paid under the Public Employees' Benefit and Insurance Program, created in Section 49-20-103.

(8) Expenses described in Subsection (7) are a cost to the department only to the extent that they exceed an offender's private insurance that is in effect at the time of the service and that covers those expenses.

(9) (a) The Public Employees' Benefit and Insurance Program shall provide information to the department that enables the department to calculate the amount to be paid to a health care provider under Subsection (7)(b).

(b) The department shall ensure that information provided under Subsection (9)(a) is confidential.

Amended by Chapter 386, 2010 General Session

64-13-30.5. Payment by inmate for postsecondary educational tuition.

(1) (a) An inmate participating in a postsecondary education program through the department shall pay to the department at the time of enrollment 50% of the costs of the postsecondary education tuition.

(b) If an inmate desires to participate in the postsecondary education program but is unable to pay the costs of the education because of inadequate financial resources, the inmate may participate in a deferred tuition payment program under this section.

(c) The department and the Office of State Debt Collection shall coordinate a deferred postsecondary education tuition repayment program to provide inmates a reasonable payment schedule and payment amount to allow for deferred payment of the postsecondary educational tuition obligation the inmate incurred while under supervision of the department, which shall:

(i) account for all postsecondary education tuition costs incurred by the inmate while under the supervision of the department;

(ii) establish an appropriate time for the inmate to begin payment of postsecondary education tuition costs, which shall require that payments start no later than two years after termination of parole; and

(iii) establish a payment schedule and payment amounts, including prevailing interest rates, commensurate with student loans currently being offered by local financial institutions.

(d) Neither the department nor the Office of State Debt Collection may relieve an offender of the postsecondary tuition repayment responsibility.

(e) The department shall pay costs of postsecondary education not paid by the offender at the time of participation in the program from the Prison Telephone Surcharge Account.

(2) (a) Of those tuition funds collected by the Office of State Debt Collection under this section, 10% may be used by the Office of State Debt Collection for operation of the deferred payment program.

(b) All other funds collected as repayment for postsecondary tuition costs shall be deposited in the Prison Telephone Surcharge Account.

(3) Only inmates lawfully present in the United States may participate in the

postsecondary educational program offered through the department.

Enacted by Chapter 258, 2009 General Session

64-13-31. Emergencies.

In the case of riots, disturbances, or other emergencies at correctional facilities, the Department of Corrections has authority to direct the resolution of the emergencies. The department may request and coordinate the assistance of other state and local agencies in responding to the emergencies.

Amended by Chapter 116, 1987 General Session

64-13-32. Discipline of offenders -- Use of force.

(1) If an offender offers violence to an officer or other employee of the Department of Corrections, or to another offender, or to any other person; attempts to damage or damages any corrections property; attempts to escape; or resists or refuses to obey any lawful and reasonable command; the officers and other employees of the department may use all reasonable means, including the use of weapons, to defend themselves and department property and to enforce the observance of discipline and prevent escapes.

(2) An inmate who is housed in a secure correctional facility and is in the act of escaping from that secure correctional facility or from the custody of a peace or correctional officer is presumed to pose a threat of death or serious bodily injury to an officer or others if apprehension is delayed. Notwithstanding Section 76-2-404, a peace or correctional officer is justified in using deadly force if he reasonably believes deadly force is necessary to apprehend the inmate.

Amended by Chapter 49, 1993 General Session

64-13-33. Restitution for offenses -- Debt collection.

(1) Following an administrative hearing, the department is authorized to require restitution from an offender for expenses incurred by the department as a result of the offender's violation of department rules. The department is authorized to require payment from the offender's account or to place a hold on it to secure compliance with this section.

(2) The department shall turn over to the Office of State Debt Collection any debt under this section that is unpaid at the time the offender is released from parole.

Amended by Chapter 258, 2009 General Session

64-13-34. Safety of offenders.

In case of disaster or acts of God that threaten the safety of inmates or the security of a secure correctional facility, inmates may be moved to a suitable place of security. Inmates shall be returned to a correctional facility as soon as it is practicable.

Amended by Chapter 116, 1987 General Session

64-13-36. Testing of prisoners for AIDS and HIV infection -- Medical care -- Department authority.

(1) As used in this section:

(a) "Prisoner" means a person who has been adjudicated and found guilty of a criminal offense and who is in the custody of and under the jurisdiction of the department.

(b) "Test" or "testing" means a test or tests for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection in accordance with standards recommended by the state Department of Health.

(2) (a) Within 90 days after July 1, 1989, the effective date of this act, the department shall test or provide for testing of all prisoners who are under the jurisdiction of the department, and subsequently test or provide for testing of all prisoners who are committed to the jurisdiction of the department upon admission or within a reasonable period after admission.

(b) At the time test results are provided to persons tested, the department shall provide education and counseling regarding Acquired Immunodeficiency Syndrome and Human Immunodeficiency Virus infection.

(3) (a) The results of tests conducted under Subsection (2) become part of the inmate's medical file, accessible only to persons designated by department rule and in accordance with any other legal requirement for reporting of Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

(b) Medical and epidemiological information regarding results of tests conducted under Subsection (2) shall be provided to the state Department of Health.

(4) The department has authority to take action as medically indicated with regard to any prisoner who has tested positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection.

(5) Prisoners who test positive for Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus infection may not be excluded from common areas of the prison that are accessible to other prisoners solely on the basis of that condition, unless medically necessary for protection of the general prison population or staff.

Amended by Chapter 12, 1994 General Session

Amended by Chapter 148, 1994 General Session

64-13-37. Department authorized to test offenders for communicable disease.

(1) As used in this section, "communicable disease" means:

(a) an illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly, as from an infected person or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment; and

(b) a disease designated by the Department of Health by rule as a communicable disease in accordance with Section 26-6-7.

(2) The department may:

(a) test an offender for a communicable disease upon admission or within a reasonable time after admission to a correctional facility; and

(b) periodically retest the offender for a communicable disease during the time the offender is in the custody of the department.

Enacted by Chapter 277, 1993 General Session

64-13-38. Emergency release due to overcrowding.

(1) Definitions:

(a) "Maximum capacity" means every physical and funded prison bed is occupied by an inmate.

(b) "Operational capacity" means 96.5% of every physical and funded bed is occupied by an inmate.

(c) "Emergency release capacity" means 98% of every physical and funded bed is occupied by an inmate.

(2) When the executive director of the department finds that either the male or female inmate population of the Utah State Prison has exceeded operational capacity for at least 45 consecutive days, the executive director shall notify the governor, the legislative leadership, and the Board of Pardons and Parole that the department is approaching an overcrowding emergency and provide them with information relevant to that determination.

(3) When the executive director of the department finds that either the male or female inmate population of the Utah State Prison has exceeded emergency release capacity for at least 45 consecutive days, the executive director shall:

(a) notify the governor and the legislative leadership that the emergency release capacity has been reached and provide them with information relevant to that determination; and

(b) notify the Board of Pardons and Parole that the emergency release capacity has been reached so that the board may commence the emergency release process pursuant to Subsection (4).

(4) Upon the department's notifying the governor and the legislative leadership of the emergency release capacity under Subsection (3), the department shall:

(a) notify the Board of Pardons and Parole of the number of inmates who need to be released in order to return the prison inmate population to operational capacity; and

(b) in cooperation and consultation with the Board of Pardons and Parole, compile a list of inmates, the release of whom would be sufficient to return the prison inmate population to operational capacity.

(5) After 45 consecutive days of emergency release capacity, the Board of Pardons and Parole may order the release of a sufficient number of inmates identified under Subsection (4) to return the prison inmate population to operational capacity.

(6) The department shall inform the governor and the legislative leadership when the emergency release has been completed.

(7) The Board of Pardons and Parole shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

Amended by Chapter 21, 2012 General Session

64-13-39. Standards for health care facilities.

All health care facilities, as defined in Section 26-21-2, owned or operated by the department shall apply for and meet the requirements for accreditation by the National Commission for Correctional Health Care. The department shall begin the application process in a timely manner to facilitate accreditation of the health care facilities of the department on or before January 1, 1996. Inspections to ensure compliance and accreditation shall be conducted by staff of the national commission.

Enacted by Chapter 353, 1995 General Session

64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders -- Notice to health care facility.

(1) As used in this section:

(a) "Department or agency" means the Utah Department of Corrections or a department of corrections or government entity responsible for placing an offender in a facility located in Utah.

(b) "Chronically ill" has the same meaning as in Section 31A-36-102.

(c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and a nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units and other long term care beds owned or operated on the premises of acute care hospitals or critical care hospitals are not facilities for the purpose of this section.

(d) "Offender" means an inmate whom the department or agency has given an early release, pardon, or parole due to a chronic or terminal illness.

(e) "Terminally ill" has the same meaning as in Section 31A-36-102.

(2) If an offender from Utah or any other state is admitted as a resident of a facility due to the chronic or terminal illness, the department or agency placing the offender shall:

(a) provide written notice to the administrator of the facility no later than 15 days prior to the offender's admission as a resident of a facility, stating:

(i) the offense for which the offender was convicted and a description of the actual offense;

(ii) the offender's status with the department or agency;

(iii) that the information provided by the department or agency regarding the offender shall be provided to employees of the facility no later than 10 days prior to the offender's admission to the facility; and

(iv) the contact information for:

(A) the offender's parole officer and also a point of contact within the department or agency, if the offender is on parole; and

(B) a point of contact within the department or agency, if the offender is not under parole supervision but was given an early release or pardon due to a chronic or terminal illness;

(b) make available to the public on the Utah Department of Corrections' website and upon request:

(i) the name and address of the facility where the offender resides; and

(ii) the date the offender was placed at the facility; and

(c) provide a training program for employees who work in a facility where

offenders reside, and if the offender is placed at the facility by:

(i) the Utah Department of Corrections, the department shall provide the training program for the employees; and

(ii) by a department or agency from another state, that state's department or agency shall arrange with the Utah Department of Corrections to provide the training required by this Subsection (2), if training has not already been provided by the Utah Department of Corrections, and shall provide to the Utah Department of Corrections any necessary compensation for this service.

(3) The administrator of the facility shall:

(a) provide residents of the facility or their guardians notice that a convicted felon is being admitted to the facility no later than 10 days prior to the offender's admission to the facility;

(b) advise potential residents or their guardians of persons under Subsection (2) who are current residents of the facility; and

(c) provide training, offered by the Utah Department of Corrections, in the safe management of offenders for all employees.

(4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

(a) a consistent format and procedure for providing notification to facilities and information to the public in compliance with Subsection (2); and

(b) a training program, in compliance with Subsection (3) for employees, who work at facilities where offenders reside to ensure the safety of facility residents and employees.

Amended by Chapter 355, 2009 General Session

64-13-39.6. Penalty.

Any person who willfully violates Subsection 64-13-39.5(3) is guilty of a class B misdemeanor.

Enacted by Chapter 343, 2007 General Session

64-13-40. Worship for native American inmates.

(1) As used in this section:

(a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.

(b) "Native American" means an individual who is eligible for membership in a tribe recognized by the federal government.

(c) "Native American religion" means a religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community.

(d) "Native American spiritual advisor" means a person who leads, instructs, or facilitates a native American religious ceremony or service, or provides religious counseling, and includes a sweat lodge leader, medicine person, traditional religious

practitioner, or holy man or woman.

(e) "Site of worship" means a site indoors or outdoors where a person can pray or meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.

(2) (a) At the request of any native American inmate, a state correctional facility shall reasonably accommodate the practice of the native American inmate's religion including a native American religion at each state correctional facility, unless the inmate is a maximum security inmate and accommodating the maximum security inmate would threaten the reasonable security of the state correctional facility.

(b) In accommodating a native American religion, the state correctional facility shall:

(i) permit access on a regular basis to:

(A) a native American spiritual advisor; and

(B) a site of worship on the grounds of the correctional facility, unless the inmate is a maximum security inmate and permitting access would threaten the reasonable security of the state correctional facility;

(ii) permit access to items used in religious ceremonies during the religious ceremonies; and

(iii) provide a secure place at the site of worship to store the items used in religious ceremonies.

(3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required to provide to the inmate any item used in religious ceremonies.

(4) A native American spiritual advisor shall have any privilege of access to inmates and sites of worship provided to an individual functioning as a religious leader or advisor at a state correctional facility.

(5) An inmate claiming to be a native American for purposes of this section shall bear the burden of establishing to the state correctional facility that the inmate is a native American.

(6) The department may not require a native American inmate to cut the inmate's hair if it conflicts with the inmate's traditional native American religious beliefs.

(7) A state correctional facility is required to comply with this section only to the extent that it does not threaten the reasonable security of the state correctional facility.

(8) This section may not be construed as requiring a state correctional facility to permit access to peyote by a native American inmate.

Enacted by Chapter 88, 1996 General Session

64-13-41. Limitations on offender access to sexually explicit material.

(1) As used in this section:

(a) (i) "Commercially published information or material" means any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, and video and audio tapes, disks, or other recording, that is distributed or made available through any means or media for a commercial purpose.

(ii) "Commercially published information or material" includes an extraction, photocopy, clipping, or electronically created copy made from any of the items under Subsection (1)(a)(i).

- (b) (i) "Features nudity" means the information or material:
- (A) that, in the case of a one-time publication or issue, promotes itself based upon depictions of nudity or sexually explicit conduct; or
- (B) that, in the case of information or material other than under Subsection (1)(b)(i)(A), contains depictions of nudity or sexually explicit conduct on a routine or regular basis.
- (ii) The department may by rule, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exclude from the definition in Subsection (1)(b)(i) information or material containing nudity that is illustrative of medical, educational, or anthropological content.
- (c) "Nudity" means a pictorial depiction where genitalia or female breasts are exposed.
- (d) "Offender" means any person who has been convicted of a crime and is housed in a prison, jail, youth detention facility, or community correctional center.
- (e) "Sexually explicit" means a pictorial depiction of actual or simulated sexual acts, including sexual intercourse, sodomy, or masturbation.
- (f) "State funds" means state or local funding provided to the department, and includes legislative appropriations to the department, dedicated credits, grants, and money for jail reimbursement to county correctional facilities under Title 64, Chapter 13, Department of Corrections - State Prison, private providers, and contractors.
- (2) State funds may not be used to distribute or make available any commercially published information or material to an offender when the state employee, contractor, or private provider who has the authority to expend the funds knows that the commercially published information or material is sexually explicit or features nudity.
- (3) (a) When the department rejects commercially published information or material for distribution to an offender under this section, the department shall advise the publisher or sender that it may request reconsideration by the department of the decision to reject the material. However, the department need advise the publisher or sender only once in the case of information or material that on a routine or regular basis either depicts sexually explicit material or features nudity.
- (b) The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish an administrative reconsideration process.
- (c) For purposes of extraordinary relief under Rule 65B, Utah Rules of Civil Procedure, this administrative reconsideration process is a plain, speedy, and adequate legal remedy that must be exhausted before extraordinary relief is available.
- (d) There is no right to judicial review of the department's decision under this section to reject material for distribution.
- (4) This section does not apply to sexually explicit material used under Section 76-10-1207.5 for the assessment or treatment of an offender.

Amended by Chapter 382, 2008 General Session

64-13-42. Prison Telephone Surcharge Account -- Funding inmate and offender education and training programs.

- (1) (a) There is created within the General Fund a restricted account known as the Prison Telephone Surcharge Account.

- (b) The Prison Telephone Surcharge Account consists of:
 - (i) beginning July 1, 2006, revenue generated by the state from pay telephone services located at any correctional facility as defined in Section 64-13-1;
 - (ii) interest on account money;
 - (iii) (A) money paid by inmates participating in postsecondary education provided by the department; and
(B) money repaid by former inmates who have a written agreement with the department to pay for a specified portion of the tuition costs under the department's deferred tuition payment program;
 - (iv) money collected by the Office of State Debt Collection for debt described in Subsection (1)(b)(iii); and
 - (v) money appropriated by the Legislature.
- (2) Upon appropriation by the Legislature, money from the Prison Telephone Surcharge Account shall be used by the department for education and training programs for offenders and inmates as defined in Section 64-13-1.
- (3) Funds appropriated from the Prison Telephone Surcharge Account may only be used by the department for purposes under Subsections 53A-1-403.5(3)(a)(i) and (iv).

Amended by Chapter 369, 2012 General Session

64-13-43. Use of state vehicles by department personnel.

The department executive director may authorize the use of a state vehicle for official and commute purposes for a department employee who:

- (1) supervises probationers or parolees; or
- (2) investigates the criminal activity of inmates, probationers, or parolees.

Enacted by Chapter 368, 2008 General Session

64-13-44. Posthumous organ donations by inmates.

- (1) As used in this section:
 - (a) "Document of gift" has the same meaning as in Section 26-28-102.
 - (b) "Sign" has the same meaning as in Section 26-28-102.
- (2) (a) The Utah Department of Corrections shall make available to each inmate a document of gift form that allows an inmate to indicate the inmate's desire to make an anatomical gift if the inmate dies while in the custody of the department.
(b) If the inmate chooses to make an anatomical gift after death, the inmate shall complete a document of gift in accordance with the requirements of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.
(c) The department shall maintain a record of the document of gift that an inmate provides to the department.
- (3) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the department may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all inmates who complete and sign the document of gift form indicating they intend to make an anatomical gift.

(4) The making of an anatomical gift by an inmate under this section shall comply with Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

(5) Notwithstanding anything in this section, the department shall not be considered to be an inmate's "guardian" for the purposes of Title 26, Chapter 28, Revised Uniform Anatomical Gift Act.

Enacted by Chapter 256, 2013 General Session